# Kundang Lakes Country Club Bhd v Garden Masters (M) Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B–02–412 OF 1996
SHAIK DAUD, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
8 APRIL 1999

***Land Law*** *— Restraints on dealings — Caveats — Caveatable interest — Application for removal of caveat — Claim for debt owing — Whether give rise to caveatable interest*

The respondent filed a suit against the appellant for monies owed under a contract to do turfing work at the appellant's golf course ('the land'). Subsequently, the respondent entered a private caveat over the land. The appellant applied by way of an originating summons to have the caveat removed on the ground that the respondent had no caveatable interest over the land since the respondent's claim was for an alleged debt or monies allegedly owing. The trial judge directed the originating summons be converted into a writ as there were disputed issues in the affidavits which gave rise to serious issues to be tried, and thus, it was improper for the appellant to file the originating summons. The appellant appealed.

**Held**, allowing the appeal:

(1) The learned judge went completely off tangent in arriving at the conclusion as he did. He had failed to consider the only issue to be decided in this case, which was, whether the respondent has a caveatable interest in order for the caveat to subsist (see p 539E).

(2) A claim for a mere debt cannot give rise to a caveatable interest (see p 540A); *Registrar of Titles Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 and *Trans-Summit Sdn Bhd v Chun Nyook Lin (P)* [1996] 2 MLJ 247 followed. The respondent's interest — which was purely monetary in nature — lies not in the appellant's lands as to give rise to a caveatable interest. Therefore, the respondent had no caveatable interest over the appellant's lands (see p 541A–B).

**[Bahasa Malaysia summary**

Responden telah memfailkan satu tindakan terhadap perayu untuk wang yang dihutang di bawah satu kontrak untuk membuat kerja penanaman rumput di padang golf perayu ('tanah tersebut'). Kemudian, responden memasukkan kaveat persendirian atas tanah tersebut. Perayu telah memohon melalui saman pemula untuk mengalihkan kaveat tersebut atas dasar bahawa responden tidak mempunyai kepentingan yang boleh dikaveatkan atas tanah tersebut oleh kerana tuntutan responden adalah untuk hutang atau wang yang

berhutang. Hakim perbicaraan telah mengarahkan saman pemula tersebut ditukar kepada writ oleh kerana terdapat isu pertikaian di dalam afidavit yang membangkitkan persoalan serius yang perlu dibicarakan, dan oleh itu, adalah tidak patut bagi perayu untuk memfailkan saman pemula. Perayu telah merayu.

**Diputuskan**, membenarkan rayuan:

(1) Hakim perbicaraan telah menyimpang jauh dalam mencapai kesimpulan yang dibuatnya. Beliau gagal untuk mempertimbangkan satu isu yang perlu diputuskan di dalam kes ini, iaitu, sama ada responden mempunyai kepentingan yang boleh dikaveatkan agar kaveat tersebut boleh dikekalkan (lihat ms 539E).

(2) Satu tuntutan untuk hutang sahaja tidak boleh membangkitkan satu hak yang boleh dikaveatkan (lihat ms 540A); *Registrar of Titles Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 dan *Trans-Summit Sdn Bhd v Chun Nyook Lin (P)* [1996] 2 MLJ 247 dikut. Kepentingan responden — yang hanya dalam bentuk kewangan — tidak berkait dengan tanah perayu untuk membangkitkan satu hak yang boleh dikaveatkan. Oleh itu, responden tidak mempunyai hak yang boleh dikaveatkan di atas tanah perayu (lihat ms 541A–B).]

**Notes**

For cases on application for removal of caveat on the ground of lack of caveatable interest, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2254–2255 and 2335–2336.

**Cases referred to**

*Registrar of Titles Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 (folld)

*Trans-Summit Sdn Bhd v Chun Nyook Lin (P)* [1996] 2 MLJ 247 (folld)

**Appeal from**: Originating Summons No 24–461 of 1995 (High Court, Shah Alam)

*Liza Chan* (*Harun Idris, Yeoh & Partners*) for the appellant.

*K Nadarajah* (*AG Kalidas* with him) (*K Nadarajah & Partners*) for the respondent.

**Shaik Daud JCA** (delivering judgment of court): This is an appeal from the decision of the Shah Alam High Court which had dismissed the appellant's originating summons for the removal of a private caveat entered by the respondent over the appellant's lands.

The appellant is a registered owner of all lands comprised in HS (D) 21918 up to HS (D) 21921 in the Mukim of Rawang, Selangor, on

which is situated a Golf course and country club called the Kundang Lakes Country Club Bhd. The respondent, a firm of contractors, entered into a contract with the appellant dated 12 March 1993, whereby the respondent undertook to do turfing work at the appellant's golf course. On completion of this work, there was allegedly a balance amount of RM668,011.03 due from the appellant to the respondent. A dispute arose on this balance with the appellant denying owing the respondent any amount and resulting in the respondent filing a petition to wind-up the appellant vide Winding-Up Petition No 28–4–95. This petition was strenuously contested by the appellant on the ground that no money was owing to the respondent but that the respondent had in fact been overpaid. When the petition came up for hearing, the respondent withdrew the petition. Subsequently, the respondent filed a suit against the appellant claiming the same amount as owing, which suit is pending in the Shah Alam High Court. The respondent then entered a private caveat over the appellant's lands. The appellant then filed this originating summons to have the caveat removed. At the hearing of the originating summons, the learned judge held that there are disputed issues in the affidavits which gave rise to serious issues to be tried, and further held that in the light of this, it was improper for the appellant to file the originating summons and in exercising his discretion under O 28 r 8, directed that the originating summons be converted into a writ.

With respect, we are of the view that the learned judge went completely off tangent in arriving at the conclusion as he did. It is plain to us that the only issue for the learned judge to decide in the originating summons, is whether the respondent has a caveatable interest over the appellant's lands. The issue appears to be quite straight forward. The respondent filed a suit against the appellant for the recovery of monies allegedly due and owing. The respondent then entered a private caveat over the appellant's lands. The appellant filed an application for the removal of the caveat on the ground that the respondent had no caveatable interest. Therefore, the only issue to be decided is whether the respondent has a caveatable interest in order for the caveat to subsist. With respect, this the learned judge failed to consider at all.

The appellant had throughout contended that the respondent had no caveatable interest over its lands since the respondent's claim is for an alleged debt or monies allegedly owing. While not seriously denying this, it was the contention of the respondent that the appellant (without condescending to particulars) had given an undertaking that it would sell all those lands in question in order to repay the balance claimed by the respondent, and it was apparently on the strength of this representation that the respondent lodged the caveat. The respondent further mentioned that the representation gave rise to a proprietory estoppel and as such there existed a constructive trust enabling the respondent to lodge the caveat.

We find no merits in the contention of the respondent. The so called representation was a bare allegation without condescending to particulars. The appellant is a private limited company, but there is no evidence as to the identity of the person or persons who could have made the alleged representation on behalf of the appellant.

It is trite law that a claim for a mere debt cannot give rise to a caveatable interest. In the case of the *Registrar of Titles Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44, a company called Li-Ta was the registered proprietor of a piece of land in Johore. It was indebted to the Federal Government for income tax which was overdue. It then entered into an agreement to sell its land to the respondent. On completion of the sale, the Inland Revenue got wind of it and they immediately started an action for the recovery of the overdue tax. At the same time, they wrote to the Registrar of Land Titles Johore to enter a registrar's caveat in respect of the land and this was done. This prevented the transfer of the lands. The respondent's application to the High Court for the removal of the caveat, was dismissed on the ground that the claim of the Federal Government to recover the overdue tax from Li-Ta Co was an interest the Federal Government was entitled to protection by the registrar's caveat. The respondent's appeal to the Federal Court was allowed, and the court directed the registrar to enter upon the register, the transfers of the titles of the lands and the discharges of the charges on those titles. The Registrar of Titles, Johore then appealed to the Privy Council. The Privy Council dismissed the appeal and in upholding the decision of the Federal Court held:

(1) although Malaysian income tax became due and payable by the taxpayer to the Federation upon notice of assessment, its legal nature was that of an unsecured civil debt. Until it was converted into a judgment by the recovery of judgment in an action, *the unsecured civil debt gave rise to no legal rights in or over any property of the taxpayer nor to any remedies against the taxpayer's property.* It was a mere personal claim against him and did not come within the meaning of 'interest' in s 320(1) of the National Land Code 1965;

(2) the interests which the Registrar of Titles was empowered to protect under s 320(1)(b) were confined to interests in the land that were recognized by the Land Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of the land had no such right in the land; .... (Emphasis added.)

Recently this court in *Trans-Summit Sdn Bhd v Chun Nyook Lin (P)* [1996] 2 MLJ 247 held that a mere monetary claim cannot give rise to a caveatable interest over land. In that case, the appellant, the owner of the land in question, had wanted to develop the land, and to that end, had allegedly promised to enter into a joint-venture agreement with the respondent's company (Airport Auto) to undertake the project. The appellant had backed out from the agreement and the respondent, thereupon, filed a suit in the High Court seeking a declaration, inter alia, that there existed a caveatable interest over the land. This court unanimously held that the respondent's interest lies not in the land in question but in the projects that her company hopes to gain from the joint-venture agreement with the appellant which was challenged by the appellant. Therefore, as the respondent's interest was only monetary in nature, she had no caveatable interest over the land.

As can be seen, the facts in the appeal before us are not so much dissimilar with the facts in the two cases cited above. It is clear that the

respondent's interest lies not in the appellant's lands as to give rise to a caveatable interest. We hold that the respondent's interest is purely monetary in nature and as it has instituted a claim for the recovery of the alleged debt which is seriously contested by the appellant, the respondent has no caveatable interest over the appellant's lands. For the reasons appearing in this judgment, we allowed the appeal with costs here and the court below, we ordered the private caveat to be removed and damages (if any) to be assessed by the registrar and to be paid to the appellant by the respondent. Lastly, the deposit was ordered to be refunded to the appellant.

*Appeal allowed with costs.*

Reported by Loo Lai Mee